

No. 16553

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

DAN O. HOYE, as Controller of the City of Los Angeles, and DAN
O. HOYE,

Plaintiffs-Appellants,

vs.

UNITED STATES OF AMERICA, ROBERT A. RIDDELL, Director of
Internal Revenue, and RICHARD A. WESTBERG,

Defendants-Appellees.

UNITED STATES OF AMERICA,

Plaintiff in Intervention-Appellee,

vs.

DAN O. HOYE, CITY OF LOS ANGELES and RICHARD A. WEST-
BERG,

Defendants in Intervention,

DAN O. HOYE, CITY OF LOS ANGELES,

Defendants in Intervention-Appellants.

Supplemental Brief of Plaintiffs-Appellants, Defendants in Intervention-Appellants.

ROGER ARNEBERGH,
City Attorney,

BOURKE JONES,
Assistant City Attorney,

RALPH J. EUBANK,
Assistant City Attorney,

By T. PAUL MOODY,
Deputy City Attorney,

400 City Hall,
Los Angeles 12, California,

*Attorneys for Plaintiffs-Appellants,
Defendants in Intervention-Appellants.*

FILED

NOV 30 1959

PAUL P. O'BRIEN, CLERK

TOPICAL INDEX

	PAGE
Statement of pleadings and facts.....	1
Points on appeal.....	3
Conclusion	5

TABLE OF AUTHORITIES CITED

CASES	PAGE
Hoye, Controller, v. United States, 109 Fed. Supp. 685.....	3
Tomlinson v. Smith, 128 F. 2d 808.....	4

STATUTE	
Code of Civil Procedure, Sec. 710.....	4

No. 16553

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

DAN O. HOYE, as Controller of the City of Los Angeles, and DAN
O. HOYE,
Plaintiffs-Appellants,

vs.

UNITED STATES OF AMERICA, ROBERT A. RIDDELL, Director of
Internal Revenue, and RICHARD A. WESTBERG,
Defendants-Appellees.

UNITED STATES OF AMERICA,
Plaintiff in Intervention-Appellee,
vs.

DAN O. HOYE, CITY OF LOS ANGELES and RICHARD A. WEST-
BERG,
Defendants in Intervention,

DAN O. HOYE, CITY OF LOS ANGELES,
Defendants in Intervention-Appellants.

Supplemental Brief of Plaintiffs-Appellants, Defendants in Intervention-Appellants.

Statement of Pleadings and Facts.

Pursuant to written stipulation by all parties appearing in the court below the record in prior appeal numbered 15964, and the briefs in said appeal numbered 15964, may be considered as a part of the record and as briefs on appeal in the instant appeal numbered 16553. Suffice to indicate that a complete statement of the pleadings and of the facts involved in this appeal is stated in the record in the prior appeal and the briefs in said appeal, and pur-

suant to said stipulation all the aforesaid records and briefs in appeal numbered ¹⁵⁹⁶⁴16553, are incorporated herein by reference and are made a part hereof the same as though fully set forth herein.

On March 2, 1959, the United States Court of Appeals for the Ninth Circuit made and filed its order in case numbered 15,964 reading as follows:

“IT IS HEREBY ORDERED that the order of submission heretofore filed by this court in the above numbered case of December 3rd, 1958, is vacated and the determination of this appeal held in abeyance pending the complete trial of the Government’s case in intervention, Civil No. 1065-57-T, in the court below and until such time as either an appeal is taken from the judgment in intervention, or the time for taking such an appeal expires and this court is formally advised of either fact”.

Thereafter, following the filing of said Order a trial on the merits was had in the court below and pursuant to written findings of fact and conclusions of law filed therein, the District Court for the Southern District of California, Central Division, Hon. Ernest A. Tolin, District Judge, made and filed his judgment therein on April 22, 1959, and notice of the entry thereof was given to Plaintiffs-Appellants-Defendants in Intervention-Appellants on April 24, 1959.

On June 17, 1959, Notice of Appeal was filed in said proceeding by the Appellants herein.

Points on Appeal.

(1) The District Court erred in adjudging that Plaintiffs take nothing by reason of their complaint. (See Statement of the Case in Brief of Appellant in Appeal No. 15,964 at pages 6-8, and Argument set forth in said Brief as Point I, pages 9-11).

(2) The District Court erred in adjudging that the complaint of plaintiffs in action numbered 1065-57-T, be dismissed for lack of jurisdiction of the subject matter and for lack of jurisdiction over the defendants. (Said Point No. (2) is covered by all records and briefs on appeal in the First Appeal numbered 15,964).

(3) A conflict of laws and decisions exists by virtue of diverse judgments in the lower courts of the Southern District of California, Central Division, including the judgment rendered in case numbered 1065-57-T, which laws and decisions create confusion and uncertainty in the minds of all public officials in the State of California, whose duties include the dispersing of public funds to employees of the State of California and to employees of counties, cities and other political subdivisions of said state.

The case of Hoyer, Controller, vs. United States (S. D. Cal., 1953), 109 Fed. Supp. 685, came before the District Court in a motion of the United States of America and Robert A. Riddell, as Collector of Internal Revenue, to dismiss the complaint of the plaintiff who as City Controller of the City of Los Angeles is charged with the duty of paying salaries, pensions, to the employees of said city. (See discussion of said case in Brief of Appellant, Appeal No. 15,964 at pages 15-16). As noted in the aforesaid Brief on Appeal, the District Court recognizing

the dilemma of the Controller Hoyer under Section 710, California Code of Civil Procedure and the Internal Revenue Laws of the United States, denied the Motion to Dismiss, basing its denial upon the case of *Tomlinson v. Smith* (C. A. 7, 1942), 128 F. 2d 808, (See discussion of *Tomlinson* case in Brief of Appellant in Appeal numbered 15,964, at pp. 12-15.)

The District Court in the instant action numbered 1065-57, upon motion of the United States and Robert A. Riddell, Director of Internal Revenue, dismissed the complaint of the plaintiff below on the ground that the court lacked jurisdiction of the subject matter and lacked jurisdiction over the defendants United States of America and Robert A. Riddell.

It is apparent from the foregoing decisions of the District Courts, Southern District of California, Central Division, that a definite conflict of decisions exists which should be resolved by a determination of this court.

From the pleadings, records on appeal, and briefs on appeal herein setting forth the provisions of California Code of Civil Procedure Section 710, and the requirements thereunder that Hoyer pay moneys under his jurisdiction only to the payee or upon a certified abstract of ^athe final judgment, together with an affidavit furnished therewith showing the exact amount due the creditor, and the contrary provisions of the Internal Revenue Act of 1954 requiring the direct payment of taxes claimed by the Director of Internal Revenue, upon notice of levy with final demand, it is clear that a decision of this court is necessary to protect the appellant Hoyer and all other public officials similarly situated. The resolving of this dilemma will be a distinct benefit to the United States of America and the State of California, and all counties,

cities, and political subdivisions thereof. (See Memorandum and Points and Authorities in opposition to Motion to Dismiss by Defendants-Appellees in Appeal numbered 15,964, pp. 4-5, 7.)

Conclusion.

For the foregoing reasons it is submitted that the United States District Court committed error (1) in adjudging that the Plaintiffs take nothing by reason of their complaint; (2) and erred in adjudging that the complaint of plaintiffs be dismissed for lack of jurisdiction of the subject matter and for lack of jurisdiction over the defendants, and (3) that a conflict of laws and decisions exists and must be resolved thereby permitting a more effective inter-Governmental operation between the United States of America and its Department of Internal Revenue, and the State of California, including all counties, cities, and political subdivisions thereof.

Respectfully submitted,

ROGER ARNEBERGH,

City Attorney,

BOURKE JONES,

Assistant City Attorney,

RALPH J. EUBANK,

Assistant City Attorney,

By T. PAUL MOODY,

Deputy City Attorney,

Attorneys for Plaintiffs-Appellants,

Defendants in Intervention-Appellants.

